Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

JOZSEF ANDREW GUTI,

Appellant,

vs.

STATE OF WASHINGTON,

Respondent.

MERLE V. PERRIN,

Appellant,

vs.

STATE OF WASHINGTON,

Respondent.

NO. 80-501

ON WRIT OF CERTIORARI
TO THE
UNITED STATES SUPREME COURT
FROM THE COURT OF APPEALS OF
THE STATE OF WASHINGTON

PETITION FOR CERTIORARI

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QUESTION FOR REVIEW

Whether or not, in this era of the telephonic affidavit, the Fourth Amendment to the United States Constitution requires that a police officer supplying information essential to a finding of probable cause transmit his information under oath and penalty of perjury directly to the magistrate by telephone, affidavit or otherwise, absent some exigency which would make compliance impossible.

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IDENTITY OF PETITIONERS

Jozsef Andrew Guti and Merle V. Perrin are the joint Petitioners herein. Jozsef Andrew Guti and Merle V. Perrin were Petitioners to the Washington Supreme Court (review denied), Appellants in the Court of Appeals of the State of Washington (Division II), and Defendants in the Clark County Superior Court of the State of Washington.

OPINIONS BELOW

Jozsef Andrew Guti and Merle V. Perrin seek the granting of a Writ of Certiorari for discretionary review by this Court of a decision of the Washington Court of Appeals, Division II, affirming their respective convictions, upon stipulated facts at bench trial in each case, of crimes of possession of controlled substances in two unrelated cases. (Superior Court of the State of Washington, Clark County; Jozsef Andrew Guti - Case No. 10041, Merle V.

Perrin - Case No. 9807). The two cases were consolidated in the Washington Court of Appeals because each case contained an identical issue of law with only minor factual differences. The opinion of the Court of Appeals, No. 3448 - II and No. 3771 - II, was filed on April 7, 1980. Petitioners' timely Motion for Reconsideration was denied by the Court of Appeals on May 13, 1980. Petitioners' timely application for direct review to the Washington Supreme Court was denied on July 18, 1980 (Washington Supreme Court No. 47089 - 8). A copy of the relevant trial court Stipulations of Fact, Findings of Fact, Conclusions of Law, and Orders are attached in Appendix "A". A copy of the opinion of the Washington Court of Appeals is attached in Appendix "B". A copy of the Order denying Petitioners' Motion for Reconsideration is attached in Appendix "C". A copy of the

Washington Supreme Court's letter denying review is attached, also in Appendix "C".

STATEMENT OF JURISDICTIONAL GROUNDS

The Court of Appeals order affirming Petitioners' respective convictions was filed April 7, 1980. The Court of Appeals Order Denying Motion for Reconsideration was dated May 13, 1980. The Washington Supreme Court's notation Order Denying Supreme Court Review of Petitioners' conviction was entered July 18, 1980. Since before that date Petitioners' State remedies had not yet been exhausted, this Petition for Writ of Certiorari to review the judgment in this criminal case from the Washington State Court of last resort should be deemed timely if filed with the Clerk within 60 days after July 18, 1980, in accordance with Rule 20, of the Court Rules of the Supreme Court of the United States.

This Court has jurisdiction to review by Writ of Certiorari under 28 U.S.C. Sec. 1257(3), and Rule 17.1.(c) of the United States Supreme Court Rules.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the Constitution of the United States of America.

The Fourteenth Amendment to the Constitution of the United States of America.

Washington Court Rules of Criminal Procedure 2.3(C).

Washington Justice Court Criminal Rules 2.10(C).

(Relevant Constitutional and Statutory Provisions set out in entirety in Appendix "E").

STATEMENT OF THE CASE

In each of the cases before the court, the trial court denied a defense motion to

quash the search warrant and suppress all evidence seized during execution thereof (see pages v and xiii, Appendix "A"). Thereafter, each Defendant stipulated to the State's evidence and findings of guilt were entered by the court (pages vii and xv, Appendix "A"). Each case involves identical issues of law with only minor factual differences. Accordingly, the two cases were consolidated for argument on appeal (see pages iii and iv, Appendix "B"). The search warrants and supporting affidavits are contained in Appendix "D" and the trial court Findings of Fact in each case are separately reproduced and set forth in Appendix "A".

In State v. Perrin, the trial court found that Merle Perrin was arrested on September 10, 1977, when officers of the Clark County Sheriff's Office and Vancouver Police Department executed a Clark County District Court Search Warrant at his residence (Finding of Fact 1, page xi,

Appendix "A"). The search warrant had been issued on September 10, 1977 after Detrective David Marosi of the Vancouver Police Department furnished Clark County District Judge C. Brent Nevin with the typewritten affidavit, which affidavit is attached hereto in Appendix "D", pages xxiv-xxvii (See Findings of Fact 2 and 3, pages xi - xii, Appendix "A"). The Defendant furnished the court with an affidavit in support of his motion for the suppression of evidence or in the alternative for disclosure of the identity of the informant (Finding of Fact 5, page xii, Appendix "A"), (both attached in Appendix "D"). The trial court denied Defendant's motion for disclosure of the identity of the informant (Finding of Fact 6, page xii, Appendix "A"). The trial court noted that Detective Marosi's sworn affidavit contained unsworn hearsay information provided by Deputy John Dush and found that if such unsworn

hearsay information could appropriately be used to establish reliability of the informant, then the affidavit supporting the search warrant would be sufficient (Findings of Fact 8 and 11, pages xii - xiii, Appendix "A"). It then noted that present case law did not prevent reliance on unsworn hearsay information such as that provided by Deputy Dush via Detective Marosi's sworn affidavit (Finding of Fact 8, page xii, Appendix "A").

The court found that although this particular affidavit was not telephonic, the usual practice in Clark County is for an officer to call the magistrate and apply for the search warrant over the phone after being sworn (Finding of Fact 9, page xii, Appendix "A"). It found that there were no exigent circumstances to preclude Deputy Dush from calling the magistrate and relating his information about the informant under oath and that Deputy Dush had ample time to do so (Finding of Fact

10, page xii - xiii, Appendix "A"), and that without the information provided by Deputy Dush the affidavit would have been insufficient to establish the reliability of the informant and the motion to suppress would have been granted (Finding of Fact 11, page xiii, Appendix "A").

The trial court in State v. Guti found that Jozsef Guti was arrested on April 17, 1978, when officers of the Clark County Sheriff's office executed a Clark County District Court Search Warrant at his residence (Finding of Fact 1, page iii, Appendix "A"). It found that the search warrant had been issued on April 7, 1978 by the Honorable Eugene F. Harris, Judge of the Clark County District Court, based on a telephonically communicated and properly sworn affidavit by Deputy Edward Lippert of the Clark County Sheriff's office, said affidavit stating certain facts and circumstances related to Deputy Lippert by one Frank R. O'Donnell of the Portland

Police Bureau, Portland, Oregon (Findings of Fact 2, 3, and 4, pages iii - iv, Appendix "A"). The facts and circumstances related to Deputy Lippert by Officer O'Donnell were acquired by the latter from an undisclosed, confidential, reliable informant (Finding of Fact 4, page iv, Appendix "A"). The trial court found that all four Judges of the District Court of Clark County are set up for receiving telephonically communicated search warrant affidavits and do in fact issue search warrants in this fashion (Finding of Fact 5, page iv, Appendix "A"). It also found that there were no exigent circumstances which prevented Officer O'Donnell from communicating the facts and circumstances directly to Judge Harris over the telephone (Finding of Fact 6, page iv, Appendix "A").

The trial court further noted that Deputy Lippert consulted a Deputy Roschella of the Clark County Sheriff's office, regarding Officer O'Donnell's

past reliability in providing information concerning the possession of controlled substances, and that deputy Lippert also ran checks to determine that the residence address and description, telephone number, and the description of the Defendant provided by the informant through Officer O'Donnell, were in fact accurately stated (Findings of Fact 7, 8, and 9, page iv, Appendix "A").

The trial court in each case refused to suppress the evidence obtained as a result of execution of the search warrants whose validity is at issue on this appeal and accordingly found each Defendant guilty beyond a reasonable doubt of the crime of Felony Possession of a Controlled Substance (see Orders in Appendix "A", pages iii, vi, xi and xiv).

FEDERAL QUESTION

PROPERLY RAISED IN TIMELY FASHION

Each of these cases involves a claim

that the Petitioners' Fourth Amendment constitutional right to be free from an unreasonable search and seizure was violated by the method employed in obtaining the search warrants in question. Consequently the stage of proceedings in the trial court in which the federal question was raised in each case was pretrial and the manner in which it was raised in each case was by a motion to suppress (see Appendix "D"). The trial court passed on the federal question by denying the motion to suppress in each case. At the appellate level the federal question sought to be reviewed was raised as the First Assignment of Error in Appellants' Brief (quoted in part at pages viii - ix of Appendix "B"). The Court of Appeals affirmed the trial courts' treatment of the federal question (see pages vi - vii, Appendix "B") and a timely Motion of Reconsideration of the federal question was also denied (see Appendix "C"). Finally, Petitioners sought review of the federal question in a timely fa-

shion before the Washington Supreme Court by raising it as an assignment of error in their petiton for review addressed to the Washington Supreme Court. Again, that court denied review (see page v, Appendix "C").

ARGUMENT IN SUPPORT OF PETITION FOR REVIEW ON CERTIORARI

Rule 17 of the U.S. Supreme Court Rules states that a review on Writ of Certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefore. The rule states that when a State Court or a Federal Court of Appeals has decided an important question of Federal Law which has not been, but should be, settled by this court, review on certiorari may be appropriate. This Petition presents just such a situation. The Fourth Amendment to the United States

Constitution is authority for the proposition that a police officer with information essential to a finding of probable cause must transmit his information under and subject to the penalties of perjury directly to the magistrate by telephone, affidavit or otherwise, absent some exigency which would make compliance impossible. The issue presented by this Petition clearly raises a novel and significant question question of law under the Constitution of the United States which should be reviewed and resolved by this court, so that the constitutionality of the procedure employed by the peace officers in these cases in their attempts to obtain a valid search warrant can be determined once and for all.

The Fourth Amendment to the Constitution of the United States of America provides that no warrant shall issue but upon probable cause, supported by oath

or affirmation. All evidence obtained in violation of the Fourth Amendment to the Federal Constitution is, by virtue of the Fourteenth Amendment, inadmissible in a State Court. Mapp v. Ohio, 367 U.S. 643, 6 L. Ed. 1081, 81 S.Ct. 1684 (1961).

The basic purpose of the Fourth Amendment is to safeguard the privacy and security of individuals against arbitrary invasions by government officials. Berger v. New York, 388 U.S. 41, 18 L. Ed. 1041, 87 S.Ct. 1873 (1967).

> The security of one's privacy against arbitrary intrusion by the police - which is at the core of the Fourth Amendment - is basic to a free society.

Wolf v. Colorado, 388 U.S. 25, 93 L. Ed. 1782, 1785, 69 S.Ct. 1359 (1949). Accordingly, the Fourth Amendment protection is to be "liberally construed to prevent impairment of the protection extended." Grau v. United States, 287 U.S. 124, 77 L. Ed. 212, 215, 535 S. Ct. 38

(1932).

In each case at bench a law enforcement officer's information was tendered to the issuing magistrate in the form of hearsay by an officer of an entirely independent agency. Although the affiant in each case complied with the oath requirement of the Fourth Amendment, neither Deputy Dush in State v. Perrin, nor Officer O'Donnell in State v. Guti, were examined by the issuing magistrate under penalty of perjury.

A brief review of the affidavits in conjunction with Aguilar v. Texas, 378 U.S. 108, 12 L. Ed. 2d 723, 84 S.Ct. 1509 (1964) and Dumbra v. United States, 268 U.S. 435, 441, 45 S.Ct. 546, 69 L. Ed. 1032 (1925), reveals that absent the information provided by Dush, in State v. Perrin, and by O'Donnell, in State v. Guti, the warrants clearly fail to establish probable cause (see Appendix "A", es-

pecially Finding No. 11, page xiii).

The oath requirement mandated by the Fourth Amendment is obviously designed to protect the people from unreasonable invasions based upon perjurious allegations. The importance of its functions may be summarized as follows:

> The administering of an oath in legal form is regarded not only as the highest test of truth, but as an instrument approached by the law for its ascertainment in judicial investigations. Its purpose is to purge the conscience and and impress the witness with a due sense of religious obligation, so as to secure the purity and truth of his testimony under the influence of its sanctity. Moreover, when subjected to the sanction of an oath, and formally sworn, a person is exposed to a penalty of a prosecution for perjury if he testifies falsely and corruptly.

39 Am.Jur., Oath and Affirmation, Section 6, at Page 495.

In each case at bench information critical to the lawful issuance of the warrant was tendered to the magistrate absent penalty of perjury. Very simply,

Deputy Dush and Officer O'Donnell never swore to anything, and therefore had no external incentive to relate the truth and only the truth. As a result neither Merle Perrin nor Jozsef Guti were afforded the protection mandated by the Fourth Amendment.

A long line of authority once held that warrants could lawfully issue only upon competent evidence such as would be admissible at trial. Giles v. United States, 284 F. 208 (1922); Grau v. United States, supra; Merritt v. United States 249 F. 2d 19 (1957); Davis v. United States, 35 F. 2d 957 (1929); Hice v. State, 317 P. 2d 294 (Okl.Cr. 1957); 14 A.L.R. 2d 605. However, since the United States Supreme Court's ruling in Jones v. United States, 362 U.S. 257, 4 L. Ed. 2d 697, 80 S.Ct. 725, 78 A.L.R. 2d (1960), the courts have consistently approved the use of simple hearsay in affidavits supporting search warrants.

E.g., State v. Walcott, 72 Wn. 2d 959, 435 P. 2d 994, cert. den. 393 U.S. 890, 21 L. Ed. 2d 169, 89 S.Ct. 211 (1967); 10 A.L.R. 3d 359.

Nevertheless, it is submitted that the precise issue before the court has never been specifically addressed. Since Jones and its progeny became the law of the land, telephonic affidavits have been approved by the Washington Supreme Court and their use has become widespread routine in most jurisdictions. Cr. R. 2.3(C), approving affidavits made by sworn telephonic statement, became effective only July 1, 1973, roughly 13 years following the Supreme Court's decision in Jones. Accordingly, the precise issue before the court is whether or not since the advent of the telephonic affidavit, a law enforcement officer's unsworn hearsay may, in the absence of at least some showing of exigent circumstances, fulfill the oath requirement of the Fourth Amend-

ment.

State v. Laursen, 14 Wash. App. 692, 544 P. 2d 127 (1975), does not resolve the issue. In Laursen, the affiant alleged that an unidentified informant had personally observed marijuana in the defendants residence; that the informant had never previously furnished the affiant with any information to establish reliability; that to establish the informant's reliability the affiant had checked with Sergeant Jackson of the affiant's agency, who in turn contacted George Harrison of the Bureau of Narcotics; and that the informant had, over an eight month period, provided information to the Bureau resulting in 25 drug cases. The issue before the court was whether past reliability can be established through double hearsay. The court essentially held that as long as each link in the hearsay chain passes Aguilar's two-pronged reliability test, then it may be properly considered

by the magistrate in evaluating probable cause. Laursen definitel does not discuss the availability of telephonic affidavits, or decide whether or not the oath requirement of the Fourth Amendment was violated - - nor do any of the authorities cited in the opinion address the issue.

The unsworn hearsay of the unidentified informants is not at issue in the cases at bench. It is settled that the oath requirement of the Fourth Amendment is fulfilled where the affidavit merely sets forth the hearsay allegations of a confidential informant. State v. Malbeck, 69 Wn. 2d 695, 419 P. 2d 805 (1966). To allow the magistrate to consider the unsworn hearsay statement of an unidentified informant makes perfect sense. The identity of the informants is rather jealously protected by the law to insure the free flow of information to law enforcement officers. See Roviaro v. United States,

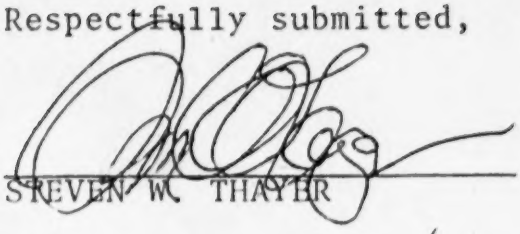
353 U.S. 53, 1 L. Ed. 2d 639, 77 S.Ct. 623 (1957). Since the identity of the confidential informant cannot be revealed, it is obvious that he cannot be expected to appear before the magistrate, swear under oath in his own name, and thereby subject himself to the penalties of perjury. This application of hearsay serves as a valuable tool to police in safeguarding the community and is therefore of general benefit to society. As a result, it clearly constitutes a reasonable use of hearsay and so complies with the spirit of the Fourth Amendment.

On the other hand, absent at least some showing of exigent circumstances, there is currently no justification in reason or logic for allowing the unsworn statements of Dush and O'Donnell, or any other law enforcement officer, to support a warrant in this era of telephonic affidavit. Perhaps at one time such a result

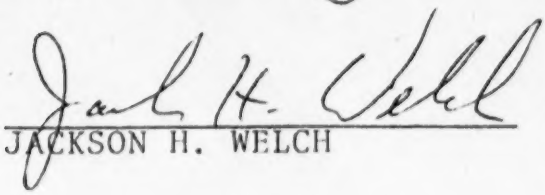
would have made some sense in terms of administrative convenience. However, since July 1, 1973, the failure of law enforcement officers to swear under penalty of perjury simply serves to frustrate rather than effectuate the purpose of the oath requirement of the Fourth Amendment. It is, a fortiori, unreasonable to do violence to such an important constitutional safeguard without a reason.

Since the warrant was obtained in violation of the letter and spirit of the Fourth Amendment, the Motion to Quash and Suppress should have been granted. Mapp v. Ohio, supra. Clearly, failure to suppress in these cases was a violation of Petitioners' constitutional rights which poses an important question of federal law which has not been, but should be, settled by this court.

Respectfully submitted,



STEVEN W. THAYER



JACKSON H. WELCH

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APPENDIX

"A"

FILED
JUL 6 1978
WILMA SCHMIDT, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,	)	No. 1 0 0 4 1
vs.	)	
JOZSEF ANDREW GUTI, Defendant.	)	STIPULATED FINDINGS OF FACT

THIS CAUSE having been set for jury trial on July 6, 1978, before the Honorable Thomas L. Lodge, Judge of the Superior Court of Clark County, State of Washington, and the parties prior to said date having agreed that such cause could instead be presented to the court upon certain stipulated facts as set forth below, the parties, now, therefore, enter into the following stipulated facts, and hereby ask the court to consider the same in lieu of a jury trial or a bench trial in this matter.

The State of Washington by and through James E. Carty, Prosecuting Attorney, and Ernest L. Nicholson, Deputy Prosecuting Attorney, and the defendant, Jozsef Andrew Guti, with his attorney, Darrell E. Lee, hereby stipulate to the following:

1. That on the 7th day of April, 1978, at approximately 9:44 p.m., police officers from the Clark County Sheriff's Office executed a Search Warrant at the residence located at 1404 S.E. 121st Avenue, Vancouver, Clark County, State of Washington.

2. That the defendant, Jozsef Andrew Guti, resided at the residence located at 1404 S.E. 121st Avenue, referred to above and was present in said residence when the Search Warrant was executed.

3. That said police officers were allowed to enter the defendant's residence, following a knocking and

announcement of their office and purpose, and a search of the residence was conducted.

4. That during the execution of said Search Warrant various items of suspected controlled substances were seized in and around the residence and garage.

5. That subsequent analysis by Clark County Criminalist, Curt Reinbold, has revealed that the suspect substances are "positive" for the presence of the controlled substance, Marihuana, in an amount in execess of forty grams, and the controlled substances Cocaine.

6. That the evidence as referred to above would establish beyond a reasonable doubt that the defendant resided in, and controlled the residence in question.

7. That the evidence would establish beyond a reasonable doubt that the defendant was in constructive possession of the substance Marihuana in an amount in execess of forty (40) grams and the substance Cocaine as referred to above.

STIPULATED AND AGREED to this 6th day of July, 1978.

Presented by:

Ernest L. Nicholson
Deputy Prosecuting Attorney

Darrell E. Lee
Attorney for Defendant

Approved 7-6-78

STIPULATED FINDINGS - 2

Service accepted , true copy received, notice of pr entation waived, consent to entry and pproved as to form this 6 day of May, 1978.

Darrell E. Lee
Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

FILED
JUL 6 1978
VILMA SCHMIDT, Clerk, Clark Co.

STATE OF WASHINGTON, Plaintiff,	)	No. 1 0 0 4 1
vs.	)	
JOZSEF ANDREW GUTI, Defendant.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

THIS MATTER having come on regularly before the Court on the 18th day of May, 1978, for hearing upon defendant's Motion to Suppress Evidence, the defendant being present in person and represented by his attorney, Darrell E. Lee, the State of Washington being represented by Ernest L. Nicholson, Deputy Prosecuting Attorney for Clark County, and the Court having reviewed the Affidavit in support of the search warrant attached hereto, and having heard the arguments of counsel regarding said motion, and being fully advised in the premises thereof, now, therefore, makes the following:

FINDINGS OF FACT

1. That the defendant was arrested on April 7th, 1978, when officers of the Clark County Sheriff's Office executed a Clark County District Court Search Warrant at his residence located at 1404 S.E. 121st Avenue, Vancouver, Clark County, Washington.

2. That the search warrant, executed at the defendant's residence, had been issued on April 7th, 1978, by the Honorable Eugene F. Harris, Judge of the Clark County District Court.

3. That the affidavit in support of the search warrant, attached hereto, was telephonically communicated and properly sworn to Judge Harris, by Deputy Edward

Lippert of the Clark County Sheriff's Office, said affidavit stating certain facts and circumstances related to him by one Frank R. O'Donnell of the Portland Police Bureau, Portland, Oregon.

4. That the facts and circumstances related to Deputy Lippert by Officer O'Donnell were acquired by Officer O'Donnell from an undisclosed, confidential, reliable informant.

5. That all four judges of the District Court of Clark County are set up for receiving telephonically communicated search warrant affidavits and issue search warrants in this fashion.

6. That there were no exigent circumstances which prevented Officer O'Donnell from communicating the facts and circumstances directly to Judge Harris over the telephone.

7. That Deputy Lippert consulted Deputy Roschella of the Clark County Sheriff's Office, regarding Officer O'Donnell's past reliability regarding information concerning the possession of controlled substances.

8. That Deputy Lippert, by checking with CHRIS Record System and the Vancouver Telephone Directory, determined that the residence address and description, telephone number, and the description of the defendant provided by the informant, through Officer O'Donnell, were in fact accurately stated.

9. That Deputy Lippert acquired a mug shot from Multnomah County, Oregon, which the informant identified as being the person in whose constructive possession Cocaine had been observed at the specified residence at the specified time.

From the foregoing Findings of Fact the Court

now makes the following

CONCLUSIONS OF LAW

1. That the affidavit communicated to Judge Harris by Deputy Lippert contains sufficient, reliable, factual information for the magistrate to conclude that criminal activity was occurring at the residence subject to the search warrant application;

2. That the affidavit communicated to Judge Harris set forth sufficient factual information from which he could conclude that the confidential reliable informant was, in fact, reliable, by virtue of his past dealings with Officer O'Donnell as stated in the affidavit, and the facts independently verified by Deputy Lippert.

3. That there was a substantial basis for crediting the hearsay presented to Judge Harris in the affidavit, hearsay being acceptable for purposes of determining probable cause for the issuance of a search warrant.

4. That based upon all of the facts and circumstances related in the affidavit, a neutral, detached magistrate, applying common sense, could reasonably find probable cause for the issuance of the search warrant.

The Court having entered the foregoing Findings of Fact and Conclusions of Law, now, therefore:

ORDERS, ADJUDGES AND DECREES that in light of the foregoing Findings of Fact and Conclusions of Law, the defendant's Motion for the suppression of evidence is hereby denied.

DONE in Open Court this 6 day of July, 1978.

THE HONORABLE THOMAS L. LODGE
JUDGE OF THE SUPERIOR COURT

Presented by:

Ernest L. Nicholson
Deputy Prosecuting Attorney

FILED
JUL 13 1978
WILMA SCHMIDT, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,	)	No. 1 0 0 4 1
vs.	)	
JOZSEF ANDREW GUTI, Defendant.	)	FINDINGS OF FACT AND CONCLUSIONS OF LAW AND DETERMINATION OF GUILT BEYOND A REASONABLE DOUBT

THIS MATTER having come on regularly for trial before the Court on the 6th day of July, 1978, the State being represented by Ernest L. Nicholson, Deputy Prosecuting Attorney for Clark County, State of Washington, and the defendant being present in person and with his counsel, Darrell E. Lee, and the defendant having waived his right to a jury trial and having stipulated to certain facts presented to the court, and the court having considered those facts, and being fully advised in the premises, hereby makes the following Findings of Fact and Conclusions of Law,

FINDINGS OF FACT

1. That on the 7th day of April, 1978, at approximately 9:44 p.m., police officers from the Clark County Sheriff's Office executed a Search Warrant at the residence located at 1404 S.E. 121st Avenue, Vancouver, Clark County, State of Washington.

2. That the defendant, Jozsef Andrew Guti, resided at the residence located at 1404 S.E. 121st Avenue, referred to above and was present in said residence when the Search Warrant was executed.

3. That said police officers were allowed to enter the defendant's residence, following a knocking and announcement of their office and purpose, and a search

of the residence was conducted.

4. That during the execution of said Search Warrant various items of suspected controlled substances were seized in and around the residence and garage.

5. That subsequent analysis by Clark County Criminalist, Curt Reinbold, has revealed that the suspect substances are "positive" for the presence of the controlled substance, Marihuana, in an amount in execess of forty grams, and the controlled substances Cocaine.

6. That the evidence as referred to above would establish beyond a reasonable doubt that the defendant resided in, and controlled the residence in question.

7. That the evidence would establish beyond a reasonable doubt that the defendant was in constructive possession of the substance Marihuana in an amount in execess of forty (40) grams and the substance Cocaine as referred to above.

CONCLUSIONS OF LAW

That based upon the facts presented to the Court in the Stipulated Findings of Fact presented by the parties with the defendant's expressed consent, the court hereby finds and concludes:

1. That the defendant, Jozsef Andrew Guti is guilty, beyond a reasonable doubt, of the crime of Possession of a Controlled Substance, to-wit: Cocaine, as charged in Count I of the Information filed herein in violation of RCW 69.50.401 (c), committed on or about April 7, 1978.

2. That the defendant Joszef Andrew Guti, is guilty, beyond a reasonable doubt, of the crime of Possession of a Controlled Substance, to-wit: Marihuana in an amount in excess of 40 grams as charged in Count III of the Information

charged herein in violation of RCW 69.50.401 (c), committed on or about April 7, 1978.

DONE in Open Court this 13 day of July, 1978.

THE HONORABLE THOMAS W. LODGE
JUDGE OF THE SUPERIOR COURT

Presented by:

Ernest L. Nicholson
Deputy Prosecuting Attorney

Service accepted, true copy received, notice of presentation waived, consent to entry and approved as to form this 12 day of July, 1978.

Darrell E. Lee
Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,	)	No. 9 8 0 7
vs.	)	
MERLE VINCENT PERRIN, Defendant.	)	STIPULATED FINDINGS OF FACT

THIS MATTER having been set for jury trial on December 5, 1977, before the Honorable J. Dean Morgan, Judge of the Superior Court of Clark County, Washington, and the parties prior to said date having agreed that such case could instead be presented to the court upon certain stipulated facts as set forth below, the parties, now, therefore, enter into the following stipulated facts, and hereby ask the Court to consider the same in lieu of a jury trial or court trial in this matter.

The State of Washington by and through James E. Carty, Prosecuting Attorney, and Arthur D. Curtis, Deputy Prosecuting Attorney, and the defendant, Merle Vincent Perrin, with his attorney, Darrell E. Lee, hereby stipulated to the following:

1. That on the 10th day of September, 1977, police officers from the Clark County Sheriff's Office and the Vancouver Police Department executed a Search Warrant at the residence located at 29012 N. W. 51st Avenue, Ridgefield, Clark County, State of Washington.

2. That the defendant, Merle Vincent Perrin, resided at the location referred to above.

3. That during the execution of said Search Warrant, various items of suspected contraband were seized.

FILED
DEC 19 1977
WILMA SCHMIDT Clerk, Clark Co.

4. A substance which was determined to be Marihuana, in excess of 40 grams, and a substance which was determined to be Amphetamines were found within the residence.

5. That the evidence as referred to above, would establish beyond a reasonble doubt that the defendant lived at the residence in question.

6. That the evidence would establish beyond a reasonable doubt that the defendant was in constructive possession of the Marihuana, in excess of 40 grams, and the Amphetamines, as referred to above.

Stipulated and Agreed to this 5th day of December, 1977.

Arthur D. Curtis
Deputy Prosecuting Attorney

Darrell E. Lee
Attorney for Defendant

Approved, 12/13/77.
R. Lee Hagen, Judge

FILED
FEB 3 1978
WILMA SCHMIDT, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON, Plaintiff, vs. MERLE VINCENT PERRIN, Defendant.	)	No. 9807 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING DEFENDANT'S MOTION FOR THE SUPPRESSION OF EVIDENCE OR DISCLOSURE OF THE INFORMANT

THIS MATTER having come regularly before the Court on the 10th day of November, 1977, for hearing upon defendant's Motion to Suppress Evidence, the defendant appearing through his attorneys, Darrell E. Lee and Steven B. Thayer, the State of Washington being represented by James E. Carty, Prosecuting Attorney in and for Clark County, through his Deputy, Dennis M. Hunter, and the court having reviewed the affidavits of the parties, having heard the argument of counsel regarding said Motion, and being fully advised in the premises thereof, now, therefore, makes the following:

FINDINGS OF FACT

1. That the defendant was arrested on September 10, 1977, when officers of the Clark County Sheriff's Office and Vancouver Police Department executed a Clark County District Court Search Warrant at this residence, located at 29012 N.W. 51st Avenue, Ridgefield, Clark County, Washington;

2. That the Search Warrant, executed at the defendant's residence, had been issued on September 10,1977, by the Honorable C. Brent Nevin, Judge of the Clark County District Court;

3. That the Search Warrant in question was secured on September 10, 1977, by Detective David Marosi of the Vancouver Police Department, who furnished Judge Nevin with a typewriten

The Darrell E. Lee Law Office
9100 N.E. Hwy. 99
Vancouver, Washington 98665
(206) 696-2340

affidavit, ~~which affidavit is attached hereto as Appendix I;~~ clerk's document #22.

4. That in support of this Motion for the Suppression of Evidence or, in the alternative, Disclosure of the Identity of the Informant, defendant furnished the court with an affidavit, ~~which affidavit is attached hereto as Appendix II;~~ clerk's document #21.

5. That in opposition to the Motion for Disclosure of the Identity of the Informant, Detective Marosi furnished the court with an affidavit, which affidavit is ~~attached hereto as Appendix III;~~ clerk's document #25.

6. The court finds that the defendant's affidavit is insufficient to require disclosure of the informant in that there is no showing that the informant was an agent of the police and no showing that Detective Marosi failed to tell the truth as told to him. State v. Casollow, 11 Wn. App.

7. That in argument, counsel for the defendant, conceded that, if the unsworn hearsay information provided by Deputy John Dush and furnished to the magistrate by way of Detective Marosi's sworn affidavit was deemed appropriate to establish reliability of the informant then the affidavit supporting the search warrant would be sufficient.

8. The court finds that Deputy Dush's unsworn information about the reliability of the informant is adequate to establish the reliability of the informant, and that according to present case law the fact that Deputy Dush was not sworn is not relevant.

9. The court finds that ~~although~~ although this particular affidavit was not telephonic, the usual practice in this county is for the officer to call the magistrate and apply for the search warrant over the phone after being sworn.

10. The court finds that there were no exigent circumstances

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to preclude Deputy Dush from calling the magistrate and relating his information about the informant under oath, and that Deputy Dush did have ample time to do so;

11. The court finds that without the information provided by Deputy Dush the affidavit would have been insufficient to establish the reliability of the informant and the motion to suppress would have been granted.

The Court having entered the foregoing Findings of Facts, now, therefore, makes the following:

CONCLUSIONS OF LAW

1. That the affidavit furnished in support of the search warrant application by Detective Marosi set forth sufficient facts for the magistrate's finding that probable cause existed for the issuance of the Search Warrant;

2. That defendant's motion for disclosure of the informant is factually inadequate.

The Court having entered the foregoing Findings of Facts and Conclusions of Law, now, therefore,

ORDERS, ADJUDGES AND DECREES that in light of the foregoing Findings of Fact and Conclusions of Law the defendant's Motion for the Suppression of Evidence or, in the alternative, Disclosure of the Identity of the Informant is denied.

DONE in Open Court this 3d day of ~~December~~ February 1978.

HONORABLE J. DEAN MORGAN
JUDGE OF THE SUPERIOR COURT

Presented by:

DARRELL E. LEE, Attorney for Defendant

Service accepted, receipt of true copy acknowledged, ~~consent to entry~~ given and approved as to form this 31 day of ~~December~~ Feb, 1978.

DEPUTY PROSECUTING ATTORNEY

The Darrell E. Lee Law Office
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Vancouver, Washington 98665
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,	)	
Plaintiff,	)	No. 9 8 0 7
vs.	)	
MERLE VINCENT PERRIN,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Defendant.	)	

THIS MATTER having come before the Honorable J. Dean Morgan, Judge of the Superior Court of Clark County, Washington, on the 5th day of December, 1977, upon stipulated facts which are presently set forth in the stipulation filed herein, and the State of Washington being represented by Arthur D. Curtis, Deputy Prosecuting Attorney, and the defendant appearing in person and with his attorney, Darrell E. Lee, and the Court after consideration of said oral stipulation, and the subsequent written stipulation submitted herein, and being fully advised in the premises, now, therefore, makes the following:

FINDINGS OF FACT

1. That the facts as set forth in the Stipulation of this cause are hereby incorporated and found to be the Findings of Fact in this cause by the Court.

2. That based upon said stipulation, the defendant, Merle Vincent Perrin, was unlawfully and feloniously in possession of a controlled substance, to-wit: Marihuana, in an amount in excess of 40 grams, on September 10, 1977, in violation of RCW 69.50.401 (c), as charged in Count I of the Information.

3. That based upon said stipulation, the defendant, Merle Vincent Perrin, was unlawfully and feloniously in possession of a controlled substance, to-wit: Amphetamines, on the

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DEC 19 1977
WILMA SCHMIDT Clerk, Clark Co.

10th day of September, 1977, in violation of RCW 69.50.401 (c), as charged in Count II of the Information.

Based upon the foregoing Findings of Fact, the Court, now, therefore, makes the following:

CONCLUSIONS OF LAW

1. That this matter and the parties are properly within the jurisdiction of this court.

2. That the State of Washington has proven beyond a reasonable doubt that the defendant, Merle Vincent Perrin, unlawfully and feloniously had in his possession a controlled substance, to-wit: Marihuana, in excess of 40 grams, on or about September 10, 1977, in Clark County, State of Washington, in violation of RCW 69.50.401 (c).

3. That the State of Washington has proven beyond a reasonable doubt that the defendant, Merle Vincent Perrin, unlawfully and feloniously had in his possession a controlled substance, to-wit: Amphetamines, on or about September 10, 1977, in Clark County, State of Washington, in violation of RCW 69.50.401 (c).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court, now, therefore,

FINDS, CONCLUDES, ORDERS, AND ADJUDGES that the defendant, Merle Vincent Perrin, is guilty beyond a reasonable doubt of the crimes of Felony Possession of a Controlled Substance, to-wit: Marihuana, as charged in Count I of the Information, and Amphetamines, as charged in Count II of the Information, and that both of these crimes occurred on or about September 10, 1977, in Clark County, State of Washington.

/

/

/

/

DONE in Open Court this 19 day of December, 1977.

HONORABLE J. DEAN MORGAN
JUDGE OF THE SUPERIOR COURT

Presented by:

Arthur D. Curtis
Deputy Prosecuting Attorney

Service accepted, receipt of true copy acknowledged, approved as to form, consent to entry and notice of presentation waived this 9 day of December, 1977.

Darrell E. Lee
Attorney for Defendant

APPENDIX

"B"

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON	)	
	)	
Plaintiff,	)	No. 9807
	)	
vs.	)	NOTICE OF APPEAL TO COURT OF APPEALS
	)	
MERLE VINCENT PERRIN	)	
	)	
Defendant.	)	

MERLE VINCENT PERRIN, defendant, seeks review by the designated Appellant Court of the Order Deferring Sentence entered by the Clark County Superior Court, the honorable Judge Dean Morgan, on April 14, 1978.

Dated this 19 day of April, 1978.

DARRELL E. LEE
Attorney for Defendant

DARRELL E. LEE
Attorney-at-Law
9102 NE Hwy 99
Vancouver, Washington 98665
1-(206)-696-3349

Clark County Prosecutor's Office
Attorney for Plaintiff
Clark County Courthouse
Vancouver, Washington 98660
1-(206)-699-2261

Mr. Merle Perrin
29012 NW 51st Ave
Ridgefield, Washington 98642
1-(206)-887-3337

FILED
APR 19 1978
W. J. SCHWAB, Clerk, Clark Co.

4-21-78 Cert. copy to Jim Peters, Dep Pros Atty
by Barbara O'Neill Dep Clerk

NOTICE OF APPEAL

The Darrell E. Lee Law Office
9102 N.E. Hwy. 99
Vancouver, Washington 98665
(206) 696-3349

Service Accepted of
Copy Received This
6th Day of October.
Ernest L. Nichols

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff, vs. JOZSEF ANDREW GUTI, Defendant.	NO. 1 0 0 41 NOTICE OF APPEAL TO THE COURT OF APPEALS

JOZSEF ANDREW GUTI, Defendant, seeks review by the designated appellate court of the order suspending sentence entered by the Clark County Superior Court, the Honorable Judge Thomas L. Lodge, on October 3, 1978.

DATED this 6 day of October, 1978.

Steven Thayer
STEVEN W. THAYER
Attorney for Defendant

Steven W. Thayer
The Darrell E. Lee Law Office
9102 NE Hwy. 99
Vancouver, WA 98665
1-(206)-696-3349

Clark County Prosecutors Office
Attorney for Plaintiff
Clark County Courthouse
Vancouver, WA 98660
1-(206)-699-2261

Mr. Jozsef Guti
1404 SE 121st Avenue
Vancouver, WA 98664

FILED
OCT 6 1978
WILMA SCHMIDT, Clerk, Clark Co.

Cert. Copy served to Pros Atty. 10-3-78

The Darrell E. Lee Law Office
9102 N.E. Hwy 99
Vancouver, Washington 98665
(206) 696-3349

No. 3 711-II

COURT OF APPEALS, DIVISION II

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent. vs. JOZSEF ANDREW GUTI, Appellant.	MOTION AND ORDER TO CONSOLIDATE

COMES NOW, Steven W. Thayer of The Darrell E. Lee Law Office, and Clark County Prosecuting Attorney James E. Carty, and hereby jointly move this Court for an Order consolidating State vs. Perrin, 3448-II into the above-numbered cause by and for the reason that identical issues are presented in each of the foregoing appeals and same may be argued effectively together.

DATED this 28 day of November, 1978.

Steven W. Thayer
STEVEN W. THAYER

Ernest L. Nicholson, Deputy for
JAMES E. CARTY
James E. Carty

ORDER

This matter having come on regularly for hearing before the Court upon stipulation of the parties above-signed, and it appearing to the Court that identical issues are presented for review in each

of the cases above-named, and that said cases should therefore be joined for review in the Court of Appeals, now, therefore,

IT IS HEREBY ORDERED that cause numbers 3448-II and 3711-II are consolidated for the purpose of review.

DATED this 14th day of November, 1978.

Vernon L. Swanson
JUDGE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,
Respondent

v.

JOXSEF ANDREW GUTI
Appellant

THE STATE OF WASHINGTON,
Respondent

v.

MERLE VINCENT PERRIN
Appellant

9807

MANDATE

No. 3448-II & 3711-II

Clark County No. 9807 & 10041

The State of Washington to: The Superior Court of the State of Washington

in and for Clark County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on April 7, 1980, became the decision terminating review of this court in the above entitled case on July 18, 1980. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

CC: Steven W. Thayer
Ernest L. Nicholson

FILED
AUG 18 1980
George J. Miller, Clerk, Clark Co.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 15th day of August, 1980

- v -

Leslie Stomsvik
Clerk of the Court of Appeals, State of Washington,
Division II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. JOZSEF ANDREW GUTI, Appellant.	)	No. 3448-II
THE STATE OF WASHINGTON, Respondent, v. MERLE VINCENT PERRIN, Appellant.	)	No. 3711-II Division Two Unpublished Opinion
	Filed	APR 7 1980

REED, C. J. -- Defendants Jozsef Guti and Merle Perrin have consolidated their appeals and assign error to the trial courts' failure to suppress evidence seized pursuant to allegedly invalid search warrants. Both cases concern affidavits in support of search warrants which contain information regarding the reliability of confidential informants. This information was supplied to the affiant police officers by police officers from different cities or agencies. Defendants urge us to adopt a rule requiring the latter officers to supply their information directly to the issuing magistrate via telephonic affidavit rather than by merely informing the affiant of

the relevant information. We decline to adopt such a rule and affirm the trial courts.

The rule is well settled that an affiant, seeking a search warrant, can base his information on simple hearsay. Jones v. United States, 362 U.S. 257, 4 L. Ed. 2d 697, 80 S. Ct. 725, 78 A.L.R. 2d 233 (1960). The same is true for double or multiple hearsay. State v. Laursen, 14 Wn. App. 692, 544 P.2d 127 (1975). So long as there is a basis for crediting the hearsay declarations under the Aguilar-Spinelli test, the declarations are appropriate in examining an affidavit for probable cause. Aguilar v. Texas, 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964); Spinelli v. United States, 393 U.S. 410, 21 L. Ed. 2d 637, 89 S. Ct. 584 (1969).

We know of no rule providing that a police officer who supplies information about a confidential informant's reliability must supply that information directly to the issuing magistrate. Absent other facts and circumstances indicating personal unreliability, one policeman may reasonably rely upon another policeman's factual information. United States v. Ventresca, 380 U.S. 102, 13 L. Ed. 2d 684, 85 S. Ct. 741 (1965); State v. Laursen, supra; State v. Vanzant, 14 Wn. App. 679, 544 P.2d 786 (1975).

Defendant Guti urges that the affidavit in his case had quantitatively insufficient instances of past reliable information to establish the informant's reliability. The affidavit reveals, however, that the informant had proven reliable on at least 4 other occasions. We find no merit in this assignment of error.

The convictions in this consolidated appeal are affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

WE CONCUR:

Petrich, J.

Petrich J.

COURT OF APPEALS OF THE

STATE OF WASHINGTON

DIVISION II

JOZSEF ANDREW GUTI, Appellant, v. STATE OF WASHINGTON, Respondent.	)	NO. 3 711-II
MERLE V. PERRIN, Appellant, v. STATE OF WASHINGTON, Respondent.	)	NO. 3448-II

CONSOLIDATED APPEALS FROM THE
SUPERIOR COURT FOR CLARK COUNTY

THE HONORABLE THOMAS L. LODGE, JUDGE
THE HONORABLE J. DEAN MORGAN, JUDGE

BRIEF OF APPELLANTS

Steven W. Thayer
Attorney for Appellants
9102 NE Highway 99
Vancouver, Washington 98665

(206) 574-4800

ASSIGNMENTS OF ERROR

1. The trial court erred in denying Defendants' motions to quash the warrants and suppress the items of evidence seized during execution thereof. This assignment is based upon Defendants' contention that the search warrants were not issued upon oath or affirmation as required by the Fourth Amendment to the Constitution of the United States and/or by Article I, section 7 of the Washington State Constitution.

2. The trial court erred in denying the above-referenced motion in State v. Guti for the further reason that the search warrant was not supported by probable cause.

APPENDIX

"C"

STATE OF WASHINGTON)
COUNTY OF Clark) ss

The undersigned, being first duly sworn on oath stat
that on this day affiant deposited in the mail of the Unit
States of America a properly stamped and addressed envelo
directed to the attorneys of record of plaintiff ——— co
taining a copy of the document to which the affidavit
attached.

Julie R. Duatier

Subscribed and sworn to before me this 24th day
of April, 19 80

Carol a Leith

Notary Public for the State of
Washington, residing at Vancouver

COURT OF APPEALS OF THE

STATE OF WASHINGTON

DIVISION II

JOZSEF ANDREW GUTI, Appellant, v. STATE OF WASHINGTON, Respondent.	)	NO. 3 711-II
MERLE V. PERRIN, Appellant, v. STATE OF WASHINGTON, Respondent.	)	NO. 3448-II MOTION FOR RECONSIDERATION OF DECISION TERMINATING REVIEW

COMES NOW Appellants above-named, by and through their attorney of record, Steven W. Thayer, and hereby move this Court for a reconsideration of the decision terminating review filed April 7, 1980, and stating "The convictions in this consolidated appeal are affirmed". This motion is based upon the Fourth Amendment to the United States Constitution and the authority cited in the Appellants Brief previously filed.

DATED this 24 day of April, 1980.

STEVEN W. THAYER
Attorney for Appellants

ARGUMENT IN SUPPORT OF MOTION
FOR RECONSIDERATION

This argument is addressed to the unpublished opinion drafted by Judge Reed and filed on the 7th of April, 1980. The opinion correctly summarized the facts and defined the issue.

Appellants submit the Fourth Amendment to the United States Constitution is authority for the proposition that each police officer in the chain with information essential to a finding of probable cause must transmit his information under oath to the magistrate by telephone, affidavit or otherwise absent some exigency which would make compliance impossible. Only by so doing will each piece of information be subject to the penalties of perjury which make the oath requirement of the Fourth Amendment meaningful.

As indicated during oral argument there appears to be no case authority specifically addressing the issue to the contrary. Jones and Laursen simply do not address the issue and are therefore not dispositive. No compelling policy has been advanced by the State to justify the failure of Dush and O'Donnell to render their information under oath and subject to penalty of perjury. Administrative inconvenience (the State's "unduly burdensome" argument) may never justify a failure to comply with the Fourth Amendment. Mincey v. Arizona, 437 U.S. 385, 57 L.Ed. 2d 290, 98 S.Ct. 2408 (1978). To sanction this practice obviously subverts the very purpose of the Fourth's oath requirement and therefore effectively operates to frustrate the intent of the Founding Fathers.

DATED this 24 day of April, 1980.

Respectfully Submitted,

STEVEN W. THAYER
Attorney for Appellants

'80 MAY 13 ...

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CLERK

BY DIVISION II DEPUTY

JOZSEF ANDREW GUTI,
Appellant,

v.

STATE OF WASHINGTON,
Respondent.

MERLE V. PERRIN,
Appellant,

v.

STATE OF WASHINGTON,
Respondent.

No. 3711-II
3448-II

ORDER DENYING
MOTION FOR RECONSIDERATION

The court has considered this motion for reconsideration and has determined that it should be denied. Accordingly, it is

ORDERED that the motion is denied.

DATED this 13 day of May, 1980.

CHIEF JUDGE

cc: Steven W. Thayer
James E. Carty
Ernest L. Nicholson

ORDER DENYING MOTION
FOR RECONSIDERATION

JOHN J. CHAMPAGNE
CLERK

[illegible]
[illegible]

The Supreme Court

State of Washington

Olympia

98504

753-5980
AUTO-206

July 18, 1980

Mr. Steven W. Thayer
Attorney at Law
9102 N.E. Highway 99
Vancouver, Washington 98665

Honorable James E. Carty
Prosecuting Attorney
Clark County
Mr. Ernest L. Nicholson, Deputy
Post Office Box 5000
Vancouver, Washington 98660

Counsel:

Re: Supreme Court No. 47089-8 State v. Guti & Perrin
Court of Appeals No. 3448-4-II & 3711-4-II

Following consideration of the above entitled Petition for Review on July 18, 1980, the following notation order was entered on page 298, Volume 1, of the petition for review docket:

"DENIED

/s/ ROBERT F. UTTER
Chief Justice."

Very truly yours,

JOHN J. CHAMPAGNE
Clerk

JJC:ls

cc: Court of Appeals, Division II

APPENDIX

"D"

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,	)	
	)	No. 10041
Plaintiff,	)	
	)	BRIEF IN SUPPORT
vs.	)	OF MOTION TO
	)	SUPPRESS
JOSEPH ANDREW GUTI,	)	
	)	
Defendant.	)	

COMES NOW THE Defendant, JOSEPH GUTI, by and through his attorneys of record, Darrell E. Lee and Steven W. Thayer, and submits the following argument in support of his motion to suppress.

I

FACTS

The facts pertinent to this motion are contained in the transcript of the oral affidavit for search warrant annexed hereto and incorporated by reference herein as exhibit "A".

II

ARGUMENT AND AUTHORITIES

The fruits of the search of the GUTI residence should be suppressed because the search warrant is not supported by probable cause.

The Fourth Amendment to the Constitution of the United States of America provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seraches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment is enforceable against the States through the due process clause of the Fourteenth Amendment. Mapp v. Ohio, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684, 84 A.L.R.2d 933,

MAY 17 1972
WILMA SCHMIDT, Clerk, Clark Co.

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reh. den, 368 U.S. 871, 7 L. Ed.2d 72, 82 S. Ct. 23. Evidence obtained in violation thereof must be suppressed. Mapp v. Ohio, supra.

The right of personal privacy by the Fourth Amendment is an indispensable attribute of a free society. Berger v. New York, 388 U.S. 41, 18 L. Ed.2d 1040, 87 S. Ct. 1873, conformed to 20 NY2d 881, 284 NY.S.2d 457, 231 N.E.2d 132; Schmerber v. California, 384 U.S. 757, 16 L. Ed2d 908, 86 S. Ct. 1826; Mapp v. Ohio, supra; Wolf v. Colorado, 338 U.S. 25, 93 L. Ed. 1782, 69 S. Ct. 1359. According the Fourth Amendment protection is to be liberally construed in favor of the individual. Sgro v. United States, 287 U.S. 206, 77 L. Ed. 260, 53 S. Ct. 138; Grau v. United States, 287 U.S. 124, 77 L. Ed. 212, 535 S. Ct. 38; United States v. Lefkowitz, 285 U.S. 452, 76 L. Ed. 877, 52 S. Ct. 420, 82 A.L.R. 775.

(A) The Fourth Amendment provides that warrants shall not issue but upon probable cause. U.S.C.A. Const. Amend. 4. While earlier case law held that hearsay evidence could not be considered as a basis for probable cause, Davis v. United States, 35 F.2d 957 (1929, C.A. 5th Tex.); 14 A.L.R.2d 605; 10 A.L.R.3d 359, the courts have more recently taken the position that an affiant seeking a search warrant may base his information on simple hearsay. Jones v. United States, 362 U.S. 257, 4 L. Ed.2d 697, 80 S. Ct. 725, 78 A.L.R.2d 233 (1960); State v. Walcott, 72 Wn.2d 959, 435 P.2d 994, cert. den. 393 U.S. 890, 21 L. Ed.2d 169, 89 S. Ct. 211 (1967). Even so, probable cause for issuance of a search warrant may be based upon hearsay only if there is (1) a substantial basis for believing the sources of the hearsay to be credible, and (2) there is a substantial basis for believing that there is a factual basis for the hearsay information which is furnished, Aculiar v. Texas, 378 U.S. 108, 12 L. Ed.2d 723, 84 S. Ct. 1509 (1964).

The case at bench involves not the usual hearsay situation, alluded to above, but rather double hearsay in the form of

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Vancouver, Washington 98665
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one police agency relying upon the hearsay of another agency that the unidentified informant had observed cocaine in the defendants residence. Although there is case authority in this jurisdiction upholding the validity of double hearsay (see State v. Laursen, 14 Wn. App. 692 (1975)) it is factually distinguishable from the case at bench.

Laursen involved an informant who had never personally supplied information to the executing law enforcement agency before, but had previously given information to another agency resulting in drug cases on 25 separate occasions. At issue was whether or not the past reliability of the informant could be established through double hearsay. The court held:

> ...because...affiant certified that this informant had supplied reliable information to another law enforcement agency over an extended period of time, that there was sufficient corroboration.

State v. Laursen, supra, at pg. 656. (emphasis supplied).

In the instant case the unidentified informant is alleged by the affiant to have furnished reliable information to the Portland Police Bureau resulting in only 3 prior warrants, not 25 prior cases as in Laursen. It is axiomatic that the more attenuated the hearsay chain becomes, the less reliable it is likely to be. Therefore, it follows that the more attenuated the chain becomes the greater the need for corroboration to establish its reliability.

While two or three instances of corroboration may be sufficient to establish reliability of the informant in the usual case, State v. Laursen holds that more corroboration is necessary in the more attenuated case involving double hearsay. Moreover, hearsay of this nature should be the subject of even greater scrutiny where, as in the case at bench, double hearsay constitute the only basis for probable cause contained in the affidavit.

The instant case factually differs from the usual hearsay situation for the further reason that the affiant relied upon an

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informant who had never previously worked for him. In such a circumstance the affiant must make a "substantial effort" to determine the informant's reliability. State v. Pate, 12 Wn. App. 237, 241, 529 P.2d 875 (1974). As evidenced by the following language, taken from the courts opinion at 241, a "substantial effort" involves much more than the cursory check Lippert made with O'Donnell on the day of the bust:

> It is clear that Officer Jackson made a substantial effort to determine the reliability of Doe. Not relying solely on one other law enforcement agency, he contacted a total of four different previous employers, all of which recommended Doe. This was as accurate an indication of Doe's reliability as previous employment in Longview would have been. It demonstrated that he was trustworthy, would cooperate fully and would produce accurate information. To hold that these communications were insufficient to establish reliability would creat a "Catch-22" situation in which an informant may not work for a particular law enforcement department unless he has previously been employed by that department, except in the very rare instance where he has previously supplied reliable information as a citizen. In light of the strong indicia of reliability present here, it was not necessary for Jackson to contact the FBI or run a fingerprint check. It is not unusual for an informant to have a criminal background, and any possibility that this background would affect his credibility would have been revealed during Jackson's discussions with other employers.

In view of the foregoing authorities, the instant warrant should be stricken for lack of probable cause and the fruits of the search suppressed.

(B) The Fourth Amendment proscription on unreasonable searche and seizure was further violated by the method employed in obtainin the warrant in the instant case. The warrant was obtained on the basis of Clark County Deputy Sheriff Ed Lippert's telephonic affida The information going to the past reliability of the unidentified informant was conveyed to Deputy Lippert by Officer Frank O'Donnell of the Portland Police Bureau. In this era of telephonic affidavit Officer O'Donnel could have easily communicated this information under oath directly to the issuing magistrate with a simple telephone call. Failure to utilize this procedure, which would have

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eliminated the double hearsay aspect of the affidavit, was unreasonable and in violation of the Fourth Amendment mandate that search warrants may be issued only upon oath or affirmation.

For this additional reason, the warrant should be stricken and the fruits derived from its execution suppressed.

Respectfully submitted:

STEVEN W. THAYER

DARRELL E. LEE

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EXHIBIT "B"

RECEIVED
APR 10 1978
DISTRICT CT. 1
VANCOUVER, WASH.

IN THE DISTRICT COURT OF CLARK COUNTY
STATE OF WASHINGTON

STATE OF WASHINGTON,

PLAINTIFF,

vs.

JOSEPH ANDREW GUTI,

DEFENDANT.

Transcript of oral Affidavit for Telephonic Search Warrant.

No. _____

STATE OF WASH INGTON)
) ss.
COUNTY OF CLARK)

Lippert: The tape is on, your Honor.

Judge Harris: All right. ARe the facts you are about to set forth in an Affidavit for a SearchWarrant true to your best information and belief.

Lippert: They are, your Honor.

Judge Harris: All right, consider yourself sworn. You may read me the Affidavit for the Search Warrant.

Lippert: In the District Court of Clark County, State of Washington. State of Washington. State of Washington, plaintiff vs. Joseph Andrew Guti (GUTI), defendant. State of Washington, County of Clark.

Affidavit for a Search Warrant.

Edward D. Lippert, being first duly sworn upon oath, hereby deposes and says that I have good and sufficient reason to believe that the following goods, to-wit:

Cocaine, a substance controlled by the Uniform Controlled Substances Act of the State of Washington are on the 7th day of April, 1978, in the unlawful possession of the occupants of a two story, wood frame house, brown in color with split cedar siding on front and shake roof, with attached two car garage, and a cyclone fence around the back yard, said residence having the specific address of 1404 S.E. 121st Avenue, Vancouver, Clark County, State of Washington, and said Edward D. Lippert is informed and aware of the same based upon the following:

I am a Deputy Sheriff assigned to the Narcotics Unit of the Clark County Sheriff's Office, and in this official capacity I was personally contacted by Officer Frank R. O'Donnell of the Portland Police Bureau, Portland, Oregon, on the 7th day of April, 1978.

Officer O'Donnell related to me that he has been a Police Officer for the Bureau of Police, Portland, Oregon, for approximately four and one-half years and has been assigned as a

Narcotics Investigator for the past six months. Further, I personally contacted Deputy Larry G. Roschella of the Clark County Sheriff's office. Deputy Roschella related that he has personally known Officer O'Donnell for approximately two years, and Officer O'Donnell has provided Deputy Roschella with information regarding illegal drug trafficking in Clark County, which through independent investigation conducted by Deputy Roschella has proven to be truthful, reliable and of distinct value to Deputy Roschella.

Officer O'Donnell personally related to me that he has been personally contacted by a confidential, reliable informant within the past 72 hours, and that this confidential, reliab informant related to Officer O'Donnell that this confidentia informant had occasion to be an invited guest within the abo described residence within the same past 72 hour time period Further, this confidential, reliable informant had occasion to meet Joe Guti, the defendant, within the above described residence. Further, this confidential informant related to Officer O'Donnell of the informant having observed a quantity of Cocaine in the constructive possession of subject Guti while an invited guest of the residence.

The Cocaine was observed in the kitchen area of the residenc in a clear plastic bag. The informant related of having departed the above described residence after a short time perio and then contacting Officer O'Donnell.

Further, Officer O'Donnell personally related to me that he has known this confidential, reliable informant for a period of excess of six months and during this period of time, this confidential, reliable informant has provided Officer O'Donnell with information concerning illegal trafficking of drugs in the PORTLAND, Oregon area.

Further, Officer O'Donnell personally related to me that this confidential, reliable informant has provided him with information which has resulted in the issuance of at least three Multnomah County District Court SearchWarrants, the arrest of at least five persons on the charge of criminal activity in drugs, and a seizure of a quantity of Heroin, Cocaine, dangerous drugs and Marijuana. Further, on at least two occasions, this confidential, reliable informant has purchased for Officer O'Donnell under Officer O'Donnell's direction, a quantity of what this confidential, reliable informant purported to be Cocaine, and which upon being chemically analyzed was found to be, in fact, Cocaine.

Also, on at least one other occasion, this confidential informant has purchased for Officer O'Donnell a quantity of narcotics which this confidential informant purported to be Amphatime, and of being tested in the Marquis Re-Agent test, showed positive for the presence of Amphetamine.

Further, Officer O'Donnell personally related to me thatthis confidential, reliable informant is known to him as being able to recognize Cocaine, as it exists in the drug sub-culture, having had occasion to observe same both in the drug sub-culture and in Officer O'Donnell's presence.

Further, both Officer O'Donnell and I know that Cocaine, as it exists in the drug sub-culture, exists as a white, powdery substance and is often packaged in a clear plastic bag, such as the white, powdery substance packaged in the clear, plastic bag,

which was observed by this confidential, reliable informant within the above described residence within the past 72 hours.

Further, this confidential, reliable informant furnished Officer O'Donnell with a description of the residence and a description of the defendant, both the affiant and Officer O'Donnell observed the above described residence and found out the description of the residence to be consistent with the description of the residence provided Officer O'Donnell by this confidential informant.

Further, I checked with the Chriss Record System provided a description of the defendant, Joseph Andrew Guti, this description was consistent with the description of the defendant given to Officer O'Donnell by this confidential informant.

Further, this confidential informant proved Officer O'Donnell with the phone number of 256-4847, stating this number was the number belonging to the defendant. This phone number is listed in the Vancouver, Washington telephone directory and is listed to Joseph (Jozsef) Guti, with the listed address being 1404 S.E. 121st Avenue, Vancouver, Washington.

The Chriss Record System indicates that Joseph Andrew Guti is also known as Jozsef Andrew Guti. Further, the Chriss Record System indicated that the defendant was arrested in Multnomah County, Oregon on the 7th day of March, 1977, for the crime of criminal activity in drugs. Multnomah County Mug Shot #28318 is listed as being the mug shot of the defendant. Officer O'Donnell showed this mug shot to this confidential informant and this confidential informant told Officer O'Donnell that the mug shot was a picture of the defendant, Joseph Andrew Guti.

Based upon the foregoing facts, I pray the Court for the issuance of a Search Warrant for the above described residence, including the curtilage and outbuildings thereto located.

Judge Harris: I find probable cause for the issuance of a Search Warrant. I will authorize it, you may read it to me.

Lippert: In the District Court of Clark County, State of Washington. State of Washington, plaintiff vs. Joseph Andrew Guti, defendant. State of Washington, County of Clark. Search Warrant.

THE PEOPLE OF THE STATE OF WASHINGTON, to any Sheriff, Policeman or Peace Officer in the County of Clark: Proof by oral telephonic statement under oath, made in conformity with the State of Washington Criminal Rules for Justice Court, Rule 2.10, Section (C), having been made this day to me by Clark County Deputy Sheriff Edward D. Lippert, that there is probable cause for the issuance of a Search Warrant on the grounds set forth in the State of Washington Criminal Rules for Justice Court, Rule 2.10, Section (C).

YOU ARE THEREFORE COMMANDED, that with the necessary and proper assistance to make a diligent search, good cause having been shown therefore, of the following described property; within 72 hours of the issuance of this warrant:

A two story, woodframe house, brown in color with split cedar siding on the front and a shake roof, with attached two car garage, and a cyclone fence around the back yard, said resi-

dence having the specific address of 1404 S.E. 121st Avenue, including the outbuildings and curtilage thereto located, Vancouver, Clark County, State of Washington, for the following described property;

Cocaine, a substance controlled by the "Uniform Controlled Substances Act" of the State of Washington, and if same or any part thereof be found then items of identification pertaining to the residency of the above described residence, and if same or any part thereof be found, bring the same before the Honorable District Court Judge Eugene Harris, to be disposed of according to law.

Judge Harris: You are hereby authorized to sign my name to that Search Warrant.

Lippert: O.K., your Honor. The time is 9:03 P.M., the date is the 7th day of April, 1978.

Judge Harris: O.K.

Lippert: Thank you, your Honor.

Judge Harris: Um huh. Goodnight.

Lippert: Goodbye.

Subscribed and sworn to before me this 10th day of April, 1978.

Robert C. Boyce

Notary Public in and for the State of Washington, residing at Vancouver, therein.

IN THE DISTRICT COURT OF CLARK COUNTY

STATE OF WASHINGTON

RECEIVED
APR 10 1978
DISTRICT
VANCOUVER

STATE OF WASHINGTON

Plaintiff

Vs.

"SEARCH WARRANT"

JOSEPH ANDREW GUTI

Defendant

STATE OF WASHINGTON)
) ss
COUNTY OF CLARK)

THE PEOPLE OF THE STATE OF WASHINGTON, to any Sheriff, Policeman, or Peace Officer in the County of Clark: Proof by oral telephonic statement under oath, made in conformity with the State of Washington Criminal Rules for Justice Court, Rule 2.10, Section (C), having been made this day to me by Clark County Deputy Sheriff [redacted], that there is probable cause for the issuance of a Search Warrant on the grounds set forth in the State of Washington Criminal Rules for Justice Court, Rule 2.10, Section (C);

YOU ARE THEREFORE COMMANDED, that with the necessary and proper assistance to make a diligent search, good cause having been shown therefore, of the following described property; within 72 hours of the issuance of this warrant;
A two-story, wood frame house, brown in color with split cedar siding on the front and a shake roof, with attached two car garage, and a cyclone fence around the back yard, said residence having the specific address of 1404 southeast 121st Avenue, including the outbuildings and curtilage thereto located, Vancouver

Clark County, State of Washington, for the following described property:

Cocaine, a substance controlled by the "Uniform Controlled Substances Act" of the State of Washington, and if same or any part thereof be found then items of identification pertaining to the residency of the above described residence.

....and if same or any part thereof be found, bring the same before the Honorable District Court Judge [redacted] to be disposed of according to law.

This Search Warrant was issued:

TIME: 7:03 PM DATE: April 4, 1978

Eugene Hanna
District Court Judge

HON: Eugene Hanna

BY: [redacted]

DEPT: Clark County Dist. Ct.

This Search Warrant was executed:

TIME: 7:41 PM DATE: 4/5/78

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 9807
	)	
vs.	)	MOTION TO SUPPRESS
	)	
MERLE PERRIN,	)	
	)	
Defendant.	)	

COMES NOW Darrell E. Lee and Steven W. Thayer, attorneys for the Defendant, MERLE PERRIN, and move this court for an order striking the warrant and suppressing the evidence derived from the search. This motion is based upon the brief of Defendant and the records and files in this case.

DATED this 9 day of November, 1977.

D E Lee
DARRELL E. LEE

Steven W Thayer
STEVEN W. THAYER

FILED
NOV 9 1977
WILMA SCHMIDT Clerk, Clark Co.

MOTION TO SUPPRESS

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Vancouver, Washington 98665
(206) 696-3349

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON, Plaintiff, vs. MERLE PERRIN, Defendant.	)	No. ~~9087~~ 9807 MOTION TO COMPEL DISCLOSURE OF INFORMANT'S IDENTITY, OR IN CAMERA EXAMINATION IN LIEU THEREOF

COMES NOW Darrell E. Lee and Steven W. Thayer, attorneys for the Defendant, MERLE PERRIN, and move this court for an order compelling disclosure of the identity of the informant alleged in the warrants supporting affidavit to have personally observed marijuana in the defendant's home, or, in lieu thereof, an order directing the State of Washington to produce said informant for the purpose of an in camera examination by the court.

DATED this 9 day of November, 1977.

D E Lee
DARRELL E. LEE

Steven W Thayer
STEVEN W. THAYER

FILED
NOV 9 1977
WILLIAM SCHMIDT Clerk, Clark Co.

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9100 N.E. Hwy. 99
Vancouver, Washington 98665
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SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,)
)
Plaintiff,) No. 9807
)
vs.) AFFIDAVIT
)
MERLE PERRIN,)
)
Defendant.)

FILED
NOV 9 1977
WILMA SCHMIDT Clerk, Clark Co.

STATE OF WASHINGTON)
: ss.
County of Clark)

MERLE PERRIN, being duly sworn, upon oath, deposes and says:

That he is the Defendant in the above-referenced cause:

That the affidavit for search warrant alleges that the unidentified informant observed at least three clear plastic bags of marijuana within the living room area of my residence and in my personal and constructive possession:

That this observation is alleged to have occurred at some time within the 72 hours preceeding the time of application for the search warrant on September 10, 1977:

That I at no time had any clear plastic bags containing marijuana or any substance resembling marijuana in the living room area of my residence in the 72 hours preceeding the time of application for the search warrant on September 10, 1977 as alleged in the affidavit for search warrant:

That in the 72 hours preceeding the application for the search warrant on September 10, 1977, no adults other than myself and my wife ever entered the living room area of my home.

Further your affiant saith not.

DATED this 9th day of November, 1977.

Merle Perrin
MERLE PERRIN

SUBSCRIBED AND SWORN to before me this 9th day of November, 1977.

Frances Durrega
Notary Public in and for the State of Washington residing at Ridgefield

AFFIDAVIT

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Vancouver, Washington 98665
(206) 695-3949

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
MERLE PERRIN,
Defendant.

No. ~~9087~~ 9807

MOTION FOR HEARING TO TEST CREDIBILITY OF AFFIANT

COMES NOW Darrell E. Lee and Steven W. Thayer, attorneys for Defendant, MERLE PERRIN, and move this court for a hearing, the purpose of which will be to challenge the creditibility of Officer David Marosi, upon whose sworn affidavit the search warrant in this case issued. This motion is based upon the affidavit fo the Defendant, MERLE PERRIN, and the records and files in this case.

DATED this 9 day of November, 1977.

D.E. Lee
DARRELL E. LEE

Steven W. Thayer
STEVEN W. THAYER

FILED
NOV 9 1977
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MOTION FOR HEARING TO TEST CREDIBILITY OF AFFIANT

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Vancouver, Washington 98665
(206) 696-2340

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,	)	
Plaintiff,	)	No. 9 8 0 7
vs.	)	
MERLE VINCENT PERRIN,	)	
Defendant.	)	AFFIDAVIT OF DETECTIVE DAVID MAROSI
	)	

STATE OF WASHINGTON)
ss
COUNTY OF CLARK)

DAVID MAROSI, being first duly sworn, upon oath, deposes and states:

That I am a Detective employed by the Vancouver Police Department and that I participated in the investigation and arrest of the above-named defendant.

That I am the affiant in the Search Warrant application which led to the search of the defendant's premises and his arrest.

That the affidavit in question was completed based upon information furnished to me by a confidential, reliable informant.

That I have known this confidential, reliable informant for a period in excess of six (6) months. That in this period, the confidential, reliable informant has furnished affiant as well as other area law enforcement officers with information pertaining to the illegal trafficking of controlled substances.

That it is anticipated that this confidential, reliable informant will furnish similar information in the future. That your affiant believes that disclosure of the confidential, reliable informant will compromise the informant's ability to

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NOV 10 1977
SCHMIDT Clerk, Clark Co.

provide future information and may threaten the personal safety of said informant.

Further your affiant saith not.

David Marosi

Subscribed and sworn to before me this 9th day of November, 1977.

Notary Public in and for the State of Washington, residing at Battle Ground, therein.

copy received
11-10-77
Darrell C Lee

Affidavit - 2

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)

Plaintiff,) No. 9 8 0 7

vs.)

MERLE VINCENT PERRIN,)

Defendant.) A F F I D A V I T

STATE OF WASHINGTON)
ss
COUNTY OF CLARK)

DENNIS M. HUNTER, being first duly sworn, on oath, deposes and states:

That I am a Deputy Prosecuting Attorney employed by the Clark County Prosecuting Attorney's Office and that I am currently assigned to the present case.

That for several months prior to September, 1977, I became aware of police investigation concerning a "major drug dealer" in the Ridgefield area of Clark County, Washington.

That I was informed and understood at that time that a number of agencies including Clark County Sheriff's Office, Vancouver Police Department and Drug Enforcement Agency were involved in developing intelligence information relating to the activities of this individual.

That on Saturday, September 10, 1977, I had occasion to meet with Detective Marosi at his office at the Vancouver Police Department for purposes of interviewing witnesses on an unrelated matter. That at approximately noon on Saturday, September 10, 1977, while at the Vancouver Police Department, Detective Marosi received a phone call in my presence and made inquiry to the caller about certain information that was

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NOV 10 1977
WILMA SCHMIDT Clerk, Clark Co.

- xx -

then being related to him.

At the conclusion of the telephone call, Detective Marosi advised me that he had just received "hot" information concerning the individual in Ridgefield who had been the object of the intelligence group and asked me if I would be interested in watching the execution of a search warrant that day.

That thereafter Detective Marosi placed a phone call to Detective Dush of the Clark County Sheriff's Office at his residence and advised Detective Dush that he had received information regarding the individual in Ridgefield, and that while the information did not deal with "tons" it was a felony amount, and further that he, Detective Marosi, felt that it was now or never. That shortly thereafter, I departed the Vancouver Police Department and was informed on Monday, September 12, 1977, that the individual, Merle Perrin, had been arrested during the execution of the search warrant at his residence on September 10, 1977.

Further your affiant saith not.

Dennis M. Hunter

Subscribed and sworn to before me this 10 day of November, 1977.

~~Notary Public in and for the State of Washington, residing at Battle Ground, therein.~~

Copy received
11-10-77

Service accepted and receipt of
true copy acknowledged this 28
day of Oct, 1977.
JAMES E. CARTY, Prosecuting Attorney

Dennis M. Hunter
DEPUTY PROSECUTING ATTORNEY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff, vs. MERLE PERRIN, Defendant.	No. 9 8 0 7 OMNIBUS APPLICATION BY DEFENDANT

Date: October 28, 1977

Notice to: Clark County Prosecuting Attorney

Purpose: To prepare for trial or plea and to determine the extent of discovery to be granted to each party.

I.

MOTION BY DEFENDANT

Comes now the Defendant and makes the applications or motions checked off below:

_____ 1. To dismiss for failure of the information to state an offense. Granted ___ Denied _____.

_____ 2. To sever Defendant's case and for separate trial.

_____ 3. To sever counts and for a separate trial.

_____ 4. To make more definite and certain.

X 5. For discovery of all oral, written or recorded statements made by Defendant to investigating officers or to third parties and in the possession of the Plaintiff. Will provide - DMH

Omnibus Application by Defendant - 1

FILED
OCT 28 1977
M SCHM DT, Clerk, Clark Co.

LAW OFFICES OF
WILLIAM N. CHURCH
BRIAN D. LEAHY · JAMES D. MULLINS
400 WEST 13TH STREET
VANCOUVER, WASHINGTON 98660
TELEPHONE (206) 694-1541

X 6. For discovery of the names and addresses of Plaintiff's witnesses and their statements. will provide — DMH

X 7. To inspect physical or documentary evidence in Plaintiff's possession. will allow - DMH

Reserve 8. To suppress physical evidence in Plaintiff's possession because of (1) illegal search, (2) illegal arrest. Hearing set for _____.

____ 9. For a hearing under Rule 3.5.

____ 10. To suppress evidence of the identification of the Defendant.

____ 11. To take the deposition of witnesses.

____ 12. To secure the appearance of a witness at trial or hearing.

____ 13. To inquire into the conditions of pretrial release. Affirmed_____ Modified to_____.

X 14. To state - -

(a) If there was an informer involved; yes
(b) Whether he will be called as a witness at the trial; and no

(c) To state the name and address of the informer or claim the privilege. Claim privilege-DMH

X 15. To disclose evidence in Plaintiff's possession favorable to Defendant on the issue of guilt. None known - DMH

X 16. To disclose whether it will reply on prior acts or convictions of a similar nature or proof of knowledge or intent. yes (State v. Bonner) - DMH

X 17. Advise whether any expert witness will be called, and if so, supply - -

(a) Name of witness, qualifications and subject of testimony; will provide - DMH

(b) Report will provide - DMH

X 18. To supply any reports or tests of physical or mental examinations in the control of the prosecution. None now, will provide - DMH

X 19. To supply any reports of scientific tests, experiments, or comparisons and other reports to experts in the control of the prosecution, pertaining to this case. will provide - DMH

X 20. To permit inspection and copying of any books, papers, documents, photographs or tangible objects which the prosecution - -

(a) Obtained from or belonging to the Defendant, or will permit - DMH

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(b) Which will be used at the hearing or trial.

X 21. To supply any information known concerning a prior conviction of persons whom the prosecution intends to call as witnesses at the hearing or trial. Will provide - DMH

X 22. To inform the Defendant of any information he has indicating entrapment of the Defendant. None known - DMH

DATED this 27 day of October, 1977.

B D Leahy

BRIAN D. LEAHY
Of Attorneys for Defendant

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EXHIBIT "A"

IN THE DISTRICT COURT OF CLARK COUNTY
STATE OF WASHINGTON

RECEIVED
SEP 13 1977

STATE OF WASHINGTON
PLAINTIFF

VS

MERLE PERRIN
DEFENDANT

AFFIDAVIT FOR SEARCH WARRANT

STATE OF WASHINGTON
COUNTY OF CLARK

I, DAVID MAROSI, BEING FIRST DULY SWORN UPON OATH, HEREBY DEPOSES AND SAYS THAT I HAVE GOOD AND SUFFICIENT REASON TO BELIEVE THAT THE FOLLOWING GOODS TO-WIT MARIJUANA A SUBSTANCE CONTROLLED BY THE UNIFORM CONTROLLED SUBSTANCE ACT OF THE STATE OF WASHINGTON IS ON THIS DATE THE 10TH DAY OF SEPTEMBER 1977, IN THE UNLAWFUL POSSESSION OF THE DEFENDANT MERLE PERRIN, WITHIN HIS RESIDENCE, THAT RESIDENCE BEING A SINGLE STORY, WOOD FRAME RESIDENCE DARK GREEN IN COLOR, THIS SPECIFIC RESIDENCE HAS THE SPECIFIC ADDRESS OF 29012 NorthWest 51st AVENUE RIDGEFIELD , CLARK COUNTY, STATE OF WASHINGTON, THIS SPECIFIC RESIDENCE IS LOCATED GEOGRAPHICALLY APPROXIMATELY 300 FEET NORTH OF THE INTERSECTION OF NW 289Th street and NW 51st AVENUE ON THE WEST SIDE OF 51ST AVENUE, THIS SPECIFIC RESIDENCE HAS A LARGE METAL BARN LOCATED TO THE NORTHWEST OF THE RESIDENCE WHICH IS BLUE IN COLOR, AND THE AFFIANT IS INFORMED AND AWARE OF THE SAME BASED UPON THE FOLLOWING:

THE AFFIANT IS A POLICE OFFICER FOR THE CITY OF VANCOUVER WASHINGTON, ASSIGNED TO THE DETECTIVE DIVISION OF THE VANCOUVER POLICE DEPARTMENT. IN THIS OFFICIAL CAPACITY THE AFFIANT WAS PERSONALLY CONTACTED BY A CONFIDENTIAL RELIABLE INFORMANT WITHIN THE PAST 72 HOURS, THIS CONFIDENTIAL RELIABLE INFORMANT RELATED TO THE AFFIANT THAT THE INFORMANT HAD OCCASSION TO BE THE INVITED GUEST WITHIN THE AFOREDESCRIBED RESIDENCE WITHIN THE PAST 72 HOURS AND WHILE PRESENT THEREIN HAD OCCASSION TO MEET A WHITE MALE SUBJECT KNOWN TO THE INFORMANT AS MERLE PERRIN, WHO THE INFORMANT KNOWS TO BE THE RESIDENT OF THE AFORE DESCRIBED RESIDENCE. FURTHER, THE INFORMANT RELATED THAT WHILE PRESENT WITHIN THE AFORE DESCRIBED RESIDENCE THE INFORMANT HAD OCCASSION TO OBSERVE AT LEAST THREE CLEAR PLASTIC BAGS OF A GREEN CRUSHED VEGETABLE LIKE MATERIAL KNOWN TO THE INFORMANT AS BEING MARIJUANA. THE INFORMANT FURTHER RELATED THAT THESE BAGS OF MATERIAL KNOWN TO THE INFORMANT AS BEING MARIJUANA WERE OBSERVED WITHIN THE LIVING ROOM AREA OF THE AFOREDESCRIBED RESIDENCE, IN THE PERSONAL AND CONSTRUCTIVE POSSESSION OF THE DEFENDANT MERLE PERRIN.

FURTHER, THE AFFIANT KNOWS THIS CONFIDENTIAL RELIABLE INFORMANT AS BEING ABLE TO RECOGNI MARIJUANA AS IT EXISTS IN THE DRUG SUBCULTURE HAVING HAD OCCASSION TO OBSERVE THE SAME IN THE DRUG SUBCULTURE AND IN THE AFFIANTS POSSESSION AT THE VANCOUVER POLICE DEPARTMENT

FURTHER, THE AFFIANT KNOWS BASED UPON KNOWLEDGE TRAINING AND EXPERIENCE THAT MARIJUANA AS IT EXISTS IN THE DRUG SUBCULTURE EXISTS AS A GREEN CRUSHED VEGETABLE LIKE MATERIAL WH IS NORMALLY PACKAGED FOR SALE IN CLEAR PLASTIC BAGS SUCH AS THOSE BAGS THE INFORMANT DESCRIBED TO THE AFFIANT AS BEING WITHIN THE AFOREDESCRIBED RESIDENCE, IN THE PERSONAL A CONSTRUCTIVE POSSESSION OF A WHITE MALE SUBJECT KNOWN TO THE INFORMANT AS MERLE PERRIN WITHIN THE PAST 72 HOUR TIME PERIOD.

FURTHER, THE INFORMANT RELATED OF HAVING DEPARTED THE AFOREDESCRIBED RESIDENCE AFTER HAV MADE THE ABOVE DESCRIBED OBSERVATION AND OF THEN CONTACTING THE AFFIANT AT THE VANCOUVER POLICE DEPARTMENT AND RELATING THE ABOVE DESCRIBED OBSERVATIONS TO THE AFFIANT. ALL THE ABOVE DESCRIBED FACTS HAVE OCCURRED WITHIN THE PAST 72 HOURS.

FURTHER, THIS CONFIDENTIAL, RELIABLE INFORMANT HAS PROVIDED THE AFFIANT WITH INFORMATION ABOUT THE ILLEGAL TRAFFICKING OF CONTROLLED SUBSTANCES WITHIN THE CLARK COUNTY AREA. TH INFORMATION HAS PROVED TO BE TRUTHFUL, RELIABLE AND OF DISTINCT VALUE TO THE AFFIANT, FUR THIS INFORMATION HAS BEEN VERIFIED BY INDEPENDENT INVESTIGATIONS CONDUCTED BY THE AFFIAN

FURTHER, THE AFFIANT HAS PERSONALLY CONTACTED DEPUTY JOHN DUSH OF THE CLARK COUNTY SHERI OFFICE ABOUT THIS CONFIDENTIAL RELIABLE INFORMANT. DEPUTY JOHN DUSH PERSONALLY RELATED THE AFFIANT THAT HE HAS KNOWN THIS CONFIDENTIAL, RELIABLE INFORMANT FOR A PERIOD IN EXCE OF SIX MONTHS AND DURING THE TIME THAT DEPUTY JOHN DUSH HAS KNOWN THIS INFORMANT THIS INFORMANT HAS PROVIDED HE AND OTHER DEPUTIES OF THE CLARK COUNTY SHERIFF'S OFFICE WITH INFORMATION ABOUT THE ILLEGAL TRAFFICKING OF CONTROLLED SUBSTANCES WITHIN THE CLARK COUN AREA. FURTHER, DEPUTY JOHN DUSH RELATED, THAT AS A DIRECT RESULT OF THE INFORMATION PROVIDED BY THIS INFORMANT TO HE AND OTHER OFFICERS OF THE CLARK COUNTY SHERIFF'S OFFICE DEPUTY JOHN DUSH AND OTHER DEPUTIES OF THE CLARK COUNTY SHERIFF'S OFFICE WERE ABLE TO OBTAIN ONE DISTRICT COURT SEARCH WARRANT. FURTHER, DEPUTY JOHN DUSH RELATED THAT WHEN

DEPUTY JOHN DUSH AND OTHER MEMBERS OF THE CLARK COUNTY SHERIFF'S DEPARTMENT EXECUTED THIS CLARK COUNTY DISTRICT COURT SEARCH WARRANT, AND AS A RESULT OF THE EXECUTION OF THIS SEARCH WARRANT, APPROXIMATELY ONE HUNDRED POUNDS OF UNLAWFULLY POSSESSED MARIJUANA WAS SEIZED, TWO SUBJECTS ARRESTED AND CHARGED WITH THE UNLAWFUL POSSESSION OF SAME, WITH CONVICTIONS OBTAINED IN EACH CASE IN THE SUPERIOR COURT OF CLARK COUNTY.

FURTHER, THE AFFIANT HAS BEEN IN PERSONAL CONTACT WITH DEPUTY LARRY ROSCHELLA OF THE CLARK COUNTY SHERIFF'S DEPARTMENT REFERENCE THE SUBJECT MERLE PERRIN. DEPUTY ROSCHELLA PERSONALLY RELATED TO THE AFFIANT OF HAVING BEEN CONTACTED BY AT LEAST TWO OTHER INFORMANTS WITHIN THE PAST SIX MONTHS, THESE SUBJECTS PROVIDING HIM WITH INFORMATION RELATING TO THE ACTIVITIES OF SUBJECT MERLE PERRIN. DEPUTY ROSCHELLA PERSONALLY RELATED TO THE AFFIANT OF ONE OF THESE INFORMANTS HAVING ADVISED OF SUBJECT PERRIN MAINTAINING A LARGE SUPPLY OF MARIJUANA WITHIN THE CONFINES OF THE AFOREDESCRIBED BLUE METAL BARN, AND THE OTHER INFORMANT RELATING OF HAVING BEEN PRESENT WITHIN THE AFOREDESCRIBED RESIDENCE WHEN A WHITE MALE SUBJECT KNOWN TO THIS INFORMANT AS MERLE PERRIN WAS ENGAGED IN THE PROCESS OF SMOKING A HANDROLLED CIGARETTE, WHICH THE INFORMANT STATED EMITTED AN ODOR WHICH IS CHARACTERISTIC OF MARIJUANA AS IT BURNS. IN THE CASE OF INFORMATION PROVIDED DEPUTY ROSCHELLA BY THE ABOVE TWO INFORMANTS, IN BOTH INSTANCES THE INFORMATION WAS TOO STALE TO BE USED AS THE BASIS OF PROBABLE CAUSE FOR THE ISSUANCE OF A CLARK COUNTY DISTRICT COURT SEARCH WARRANT. HOWEVER, IN THE CASE OF THE ABOVE TWO MENTIONED INFORMANTS, BOTH OF THE INFORMANTS HAVE BEEN KNOWN TO DEPUTY ROSCHELLA FOR A TIME PERIOD OF APPROXIMATELY ONE YEAR, AND DURING THIS TIME PERIOD, AT LEAST ONE OF THE INFORMANTS HAS PROVIDED DEPUTY ROSCHELLA WITH INFORMATION WHICH RESULTED IN THE ISSUANCE OF A CLARK COUNTY DISTRICT COURT SEARCH WARRANT, WITH THE EXECUTION OF THIS SEARCH WARRANT RESULTING IN THE SEIZURE OF UNLAWFULLY POSSESSED COCAINE AND MARIJUANA, THE ARREST OF TWO SUBJECTS FOR THE UNLAWFUL POSSESSION OF SAME, AND THE INITIATION OF PROSECUTION OF THESE TWO SUBJECTS. THE TRIALS OF THE ABOVE TWO SUBJECTS ARRESTED AND CHARGED WITH THE UNLAWFUL POSSESSION OF MARIJUANA AND COCAINE ARE NOW PENDING IN THE SUPERIOR COURTS OF CLARK COUNTY.

FURTHER, IN THE CASE OF THE OTHER INFORMANT WHO PROVIDED DEPUTY ROSCHELLA WITH INFORMATION THIS INFORMANT HAS NOT PROVIDED INFORMATION WHICH ACTUALLY RESULTED IN THE ISSUANCE OF A CLARK COUNTY DISTRICT COURT SEARCH WARRANT, BUT THIS INFORMANT HAS PROVIDED DEPUTY ROSCHELLA WITH INFORMATION WHICH HAS PROVEN TO BE INVALUABLE IN TERMS OF INTELIGENCE INFORMATION, WHICH RELATES TO THE STRUCTURE OF THE DRUG SUBCULTURE WITHIN CLARK COUNTY. FURTHER, DEPUTY ROSCHELLA PERSONALLY RELATED TO THE AFFIANT THAT A GREAT DEAL OF THIS INFORMATION HAS BEEN PERSONALLY CHECKED BY HIMSELF, AND HAS PROVEN TO BE TRUTHFUL, RELIABLE, AND OF A DISTINCT VALUE TO HIM IN THE PURSUIT OF HIS OFFICIAL DUTIES.

BASED UPON THE FOREGOING FACTS, THE AFFIANT PRAYS THE COURT FOR THE ISSUANCE OF A SEARCH WARRANT FOR THE AFOREDESCRIBED RESIDENCE, INCLUDING THE OUTBUILDINGS AND CURTILAGE THERETO LOCATED AT 29012 NORTHWEST 51ST AVENUE, RIDGEFIELD, CLARK COUNTY, STATE OF WASHINGTON

SUBSCRIBED AND SWORN TO BEFORE ME THIS 10TH DAY OF SEPTEMBER 1977

JUDGE OF THE DISTRICT COURT
CLARK COUNTY
STATE OF WASHINGTON

IN THE DISTRICT COURT OF CLARK COUNTY

STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff:

No. _____

vs

MERLE PERRIN

Defendant

SEARCH WARRANT

STATE OF WASHINGTON)
COUNTY OF CLARK)

THE PEOPLE OF THE STATE OF WASHINGTON, To any Sheriff, Policeman or Peace Officer in the County of Clark; Proof by AFFIDAVIT, made in conformity with the State of Washington Criminal Rules for Justice Court, Rule 2.10, section (C), having been made this day to me by Vancouver Police Department DAVID MARQUI, that there is probable cause for the issuance of a Search Warrant on the grounds set forth in the State of Washington Criminal Rules for Justice Court, Rule 2.10, section (C).

YOU ARE THEREFORE COMMANDED, that with the necessary and proper assistance to make a diligent search, good cause having been shown therefore, of the following described property; within 72 HOURS of the issuance of this warrant.

A SINGLE STORY, WOOD FRAME RESIDENCE, DARK GREEN IN COLOR. THIS SPECIFIC RESIDENCE HAS THE SPECIFIC ADDRESS OF 29012 NORTHWEST 51st AVENUE, RIDGEFIELD, CLARK COUNTY, STATE OF WASHING THIS SPECIFIC ADDRESS IS LOCATED GEOGRAPHICALLY APPROXIMATELY 300 FEET NORTH OF THE INTERSECTION OF NORTHWEST 289th STREET AND NORTHWEST 51ST AVENUE AND ON THE WEST SIDE OF NORTHWEST 51ST AVENUE. THIS SPECIFIC RESIDENCE HAS A LARGE METAL BARN BLUE IN COLOR LOCATED TO THE NORTHWEST OF THIS RESIDENCE.

RIDGEFIELD
Clark County, State of Washington, INCLUDING THE CURTILAGE AND OUTBUILDINGS THERETO:

FOR THE FOLLOWING DESCRIBED PROPERTY: MARIJUANA ; A SUBSTANCE CONTROLLED BY THE UNIFORM CONTROLLED SUBSTANCE ACT OF THE STATE OF WASHINGTON AND IF SAME OR ANY PART THEREOF BE FOUND THEN ITEMS OF IDENTIFICATION TO IDENTIFY THE RESIDENTS THEREOF:

and if you find same or any part thereof, bring the same before the Honorable District Court Judge C. Brent Nevin, to be disposed of according to law.

GIVEN, under my hand this 10th day of Sept, 19 77.

This Search Warrant was issued:

Time: 5:15 PM Date: 9/10/77

C. Brent Nevin
District Court Judge or Court Commissioner

Time and date of Execution: 5:55 pm 9/11/77

APPENDIX

"E"

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the Constitution of the United States of America provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to to be seized.

The Fourteenth Amendment to the Constitution of the United States of America has been interpreted to make the Fourth Amendment applicable to the States, by providing:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Washington Court Rules of Criminal Procedure 2.3(C), provides:

> A warrant shall issue only on an affidavit or affidavits establishing the grounds for issuing the warrant. Such affidavit or affidavits may consist of an officer's sworn telephonic testimony must be electronically recorded by the judge on a recording device in the custody of the judge at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter. If the judge finds that probable cause for the issuance of a warrant exists, he shall issue a warrant or direct an individual whom he authorizes for such purpose to affix his signature to a warrant identifying the property and naming or describing the person, place or thing to be searched. The finding of probable cause shall be based on evidence, which may be hearsay in whole or in part provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is factual basis for the information furnished. Before the ruling on a request for a warrant the court may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce. The judge shall

record a summary of any additional evidence on which he relies. The warrant shall be directed to any peace officer. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place, or thing named for the property specified. It shall designate a magistrate to whom it shall be returned. The warrant may be served at any time.

Washington Justice Court Criminal Rules 2.10(C), provides:

A warrant shall issue only on an affidavit or affidavits establishing the grounds for issuing the warrant. Such affidavit or affidavits may consist of an officer's sworn telephonic statement to the judge; provided, however, such sworn telephonic testimony must be electronically recorded at the time transmitted and retained in the court records and reduced to writing as soon as possible thereafter. If the magistrate finds that probable cause for the issuance of the warrant exists, he shall issue a warrant or direct an individual whom he authorizes for such purpose to affix his signature to a warrant identifying the property and naming or describing the person, place or thing to be searched. The finding of probable cause shall be based on evidence, which may be hearsay in whole or in part,

provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is factual basis for the information furnished. Before ruling on a request for a warrant the court may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce. The judge shall record a summary of any additional evidence on which he relies. The warrant shall be directed to any peace officer. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place, or thing named for the property specified. It shall designate a magistrate to whom it shall be returned. The warrant may be served at any time.